



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wheelchair Express, Inc.

File: B-228480.4

Date: May 3, 1988

DIGEST

Where solicitation is found to be defective after award because its evaluation scheme did not include an estimate of waiting time for each line item of transportation services so that the agency could not ensure that award resulted in the lowest cost to the government, General Accounting Office will not object to agency's decision to terminate the contract and resolicit the requirement with appropriate corrections.

DECISION

Wheelchair Express, Inc., protests the decision by the Veterans Administration (VA) Medical Center, Sioux Falls, South Dakota, to terminate the firm's contract for transportation services, awarded under invitation for bids (IFB) No. 438-2-88, and to resolicit the requirement.

We deny the protest.

The IFB, issued on August 3, 1987, provided for three types of transportation services: wheelchair van, hired car, and lie-down, with each type subdivided into trips within the city, trips beyond the city limits, and pick-up charges per patient for trips beyond the city limits. The items for trips within the city requested bids per patient and included estimates of the number of trips per patient. The line items for trips beyond the city limits requested bids per mile and included mileage estimates. Line items for pick-up charges per patient for trips beyond the city limits included estimates of number of patients. The IFB also provided a separate line item for per hour waiting time, with no estimates given, and a space for an aggregate total of all line items except the one for waiting time. Included in the solicitation was a provision allowing for the evaluation of bids for multiple awards, Federal Acquisition Regulation (FAR) § 52.214-22 (FAC 84-5).

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The VA awarded a contract for all services, based on low total price, to Wheelchair Express on September 11, 1987. That award was protested to our Office by the only other bidder, Sioux Falls Wheelchair Transportation Service, Inc. Sioux Falls contended that the VA had not evaluated bids correctly because the estimated quantity for in-town wheelchair van trips did not reflect the VA's actual requirements, and that the VA did not properly evaluate bids in accordance with FAR § 52.214-22. Sioux Falls requested termination of Wheelchair Express' contract with respect to wheelchair van trips. In response to Sioux Falls' protest, the VA concluded that the IFB was defective in that the line items for each type of transportation did not include estimated quantities for waiting time--as stated above, the IFB had only a single line item for general waiting time for all services--and that the evaluation scheme therefore did not ensure that either single or multiple awards would be based on the lowest cost to the government. Accordingly, the VA advised our Office, on November 16, 1987, that it had decided to terminate Wheelchair Express' contract and issue a revised solicitation. We therefore dismissed Sioux Falls' protest because the VA had granted Sioux Falls the relief it had requested.

Both Sioux Falls and Wheelchair Express then protested the VA's proposed decision to cancel and reissue the IFB. Sioux Falls' protest on this issue was dismissed for failure to comment on the agency report, pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1987). The bases for Wheelchair Express' protest are that the relief granted Sioux Falls, termination of the Wheelchair Express contract, was inconsistent with the relief sought in Sioux Falls' original protest, termination of the wheelchair van service within city limits; that the VA erroneously relied on Sioux Falls' calculations in making the termination decision; that the reissuance will only increase the discrepancy between the two bids since both Wheelchair Express' aggregate, evaluated bid, and the firm's waiting time price per hour, are lower than Sioux Falls'; and that the resolicitation is unfair since bid prices have been exposed. Wheelchair Express requests that its contract not be terminated or, in the alternative, that only the portion of its contract protested by Sioux Falls, the wheelchair van service within city limits, be terminated.

Our Office generally will not review a contracting agency's decision to terminate a contract for convenience since that is a matter of contract administration for consideration by a contract appeals board or by a court of competent jurisdiction. Where, however, the decision to terminate results from the agency's finding that the initial contract

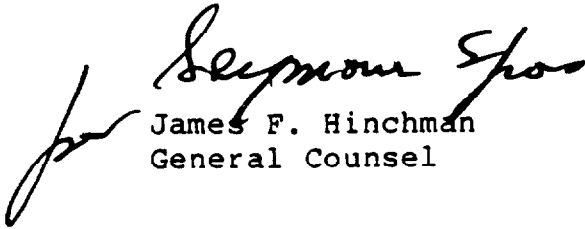
award was improper, we will review a protest against such action for the limited purpose of examining the validity of the award procedures which underlie the termination action. Central Texas College, B-211167.3, Mar. 2, 1984, 84-1 CPD ¶ 259. In addition, although the procurement regulations provide no specific direction or guidance regarding how procuring agencies should proceed after a contract termination, we will review an agency's decision to resolicit to determine if it is reasonably supported. Tiger Optical Electronics Corp., B-225358, Nov. 13, 1986, 86-2 CPD ¶ 560.

We will not object to the VA's proposed decision to terminate Wheelchair Express' contract and resolicit. As a result of the VA's failure to allocate an estimated amount of waiting time to each line item for the three types of transportation, a bidder could neither vary the charge for waiting time according to type of transportation or whether or not the trip was within or beyond city limits, nor base the charge on an estimated number of hours for each category. It was thus impossible for the agency to determine, with any degree of certainty, what the total cost of a single award to either bidder on all line items would have been, or whether multiple awards would have been more advantageous. In short, the VA simply could not ensure that any award under the invitation--whether a single award or multiple ones--would be based on the lowest cost to the government, so that the solicitation was clearly defective, and award based on it improper. North-East Imaging, Inc. B-216734, Aug. 28, 1985, 85-2 CPD ¶ 237.

The proposed termination of Wheelchair Express' contract and the VA's decision to resolicit the requirement with appropriate revisions thus is correct. In this respect, the fact that Sioux Falls only protested the propriety of the VA's award of wheelchair van service within city limits because of allegedly defective estimated quantities does not prevent the VA from terminating Wheelchair Express' contract based on its own finding that the initial contract award did not comply, for other reasons, with statute or regulation. See Central Texas College, B-211167.3, supra. We also point out that the VA did not rely on Sioux Falls' calculations regarding the estimated number of wheelchair van service trips within city limits in making its termination decision; rather, the VA relied on its own determination that the

failure to include estimated waiting time for each line item resulted in a defective solicitation that required contract termination and resolicitation.

The protest is denied.

A handwritten signature in cursive script, appearing to read 'James F. Hinchman', is written over the typed name.

James F. Hinchman
General Counsel